

ORIGINAL

Case No. 2012-0131

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**Supreme Court  
of the State of Ohio**

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STATE OF OHIO *ex rel.*  
KENT LANHAM,

Relator,

v.

DANNY R. BUBP,  
Putative State Representative,

Respondent.

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FILED  
MAY 29 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

*Original Action in Mandamus*

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**RELATOR'S MEMORANDUM IN OPPOSITION  
TO RESPONDENT'S MOTION TO DISMISS**

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Curt C. Hartman (0064242)  
The Law Firm of Curt C. Hartman  
3749 Fox Point Court  
Amelia, OH 45102  
(513) 752-8800  
[hartmanlawfirm@fuse.net](mailto:hartmanlawfirm@fuse.net)

*Counsel for Relator*

R. Michael DeWine (0009181)  
Jeannine Lesperance (085765)  
Renata Y. Staff (0086922)  
Ohio Attorney General  
30 East Broad Street  
Columbus, OH 43215

*Counsel for Respondent Danny R. Bulp*

**SUPREME COURT  
OF THE STATE OF OHIO**

<b>STATE OF OHIO <i>ex rel.</i> KENT LANHAM,</b>	:	<b>Case No. 2012-0131</b>
	:	
<b>Relator,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>DANNY R. BUBP,</b>	:	<b>RELATOR'S MEMORANDUM IN</b>
<b>Putative State Representative,</b>	:	<b>OPPOSITION TO RESPONDENTS'</b>
	:	<b>MOTION TO DISMISS</b>
<b>Respondent.</b>		

Comes now the State of Ohio, by and through Kent Lanham (“Relator”), and tenders the following memorandum in opposition to the Respondent’s Motion to Dismiss.

**MEMORANDUM IN OPPOSITION**

“Civ. R. 12(B)(6) motions attack the sufficiency of the complaint and may not be used to summarily review the merits of a cause of action in mandamus.” *State ex rel. Horwitz v. Cuyahoga Cty. Court of Common Pleas, Probate Div.*, 65 Ohio St.3d 323, 325, 603 N.E.2d 1005, 1007 (1992); *accord Hattie v. Anderson*, 68 Ohio St.3d 232, 626 N.E.2d 67, 1994-Ohio-517. Yet, in the argument section of the Motion, Respondent does not even challenge the sufficiency of the allegations in the complaint; instead he essentially asserts that his (or his counsel’s) *ipse dixit* on the application *vel non* of a claimed exemption under the Public Records Act should be blindly accepted by the Court and is, somehow, dispositive prior to the submission and consideration of any evidence or full briefing to the Court. In our judicial system, when a dispute arises, the matter is resolved through the submission of evidence, counter evidence,

cross-examination, rebuttal, *etc.*, not through the blind acceptance of one party's self-serving declarations.

Respondents have not cited to, and cannot cite to, any public records mandamus action in which the action was dismissed based upon the *ipse dixit* of the public office or person responsible for the public records that responsive records were exempted from disclosure. *See, e.g., State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 637 N.E.2d 911, 1994-Ohio-246 (where university withheld responsive public records, claiming they were exempted under the Public Records Act, alternative writ issued). As is well-established, “[a] governmental body refusing to release records has the burden of proving that the records are excepted from disclosure by R.C. 149.43.” *State ex rel. Nat. Broadcasting Co., Inc. v. City of Cleveland*, 38 Ohio St.3d 79, 526 N.E.2d 786 (1988). And “exceptions to disclosure are to be construed strictly against the custodian of public records and doubt should be resolved in favor of disclosure.” *State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 169, 637 N.E.2d 911, 912 (1994). Thus, the proper and correct resolution of the application *vel non* of a claimed exemption under the Public Records Act based upon attorney-client privilege is ultimately through the submission of evidence and briefing on that issue, not through a motion to dismiss where a public office's self-serving declarations are not subject to independent review, discovery, cross-examination and determination by a court.

For “[a] court judgment cannot be predicated on speculation and conjecture.” *Smith v. Hopton*, 169 N.E.2d 646, 648, 83 Ohio Law Abs. 176 (Cinti. Muni. 1960); *accord In re Brown*, 2011-Ohio-5294 ¶9 (“[s]upposition and speculation do not satisfy the applicant's burden of proof”). And in this case, Respondent has the burden and must prove the application of the attorney-client privilege in order to legally justify the withholding of the responsive public

records. For resolution of cases must be based upon facts as established by the evidence. See Black's Law Dictionary (6th ed. 1990) ("burden of proof" defined as "the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court"). As noted above, the respondent ultimately will have the burden of proof of establishing with proper evidence the application of the statutory exemption to the public records withheld, as well as the existence and application of the attorney-client privilege itself. "This burden can be met only by an evidentiary showing based on competent evidence, and cannot be discharged by mere conclusory or *ipse dixit* assertions." *CSX Transportation, Inc., v. Admiral Insurance Co.*, 1995 WL 855421, at \*1 (M.D. Fla. July 20, 1995).<sup>1</sup> Thus, there is no legal or factual basis for the motion to dismiss.

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<sup>1</sup> In the motion, Respondent suggests the resolution of this case be accomplished *solely* through an *in camera* review of the responsive public records which have been withheld based upon a claim of attorney-client privilege. (Motion, at 11.) While, in a few instances, courts may have conducted an *in camera* review along with other evidence, those cases failed to address or even consider that, in original actions, this Court sits as the ultimate trier of fact. *State ex rel. Lindenschmidt v. Butler Cty. Bd. of Comm'rs*, 72 Ohio St.3d 464, 466, 1995-Ohio-49. For these cases never addressed or considered whether such an *in camera* submission is even proper or constitutional for the determination of the merits of litigation.

"Our adversarial legal system generally does not tolerate *ex parte* determinations on the merits of a civil case." *Application of Eisenberg*, 654 F.2d 1107, 1112 (5th Cir. 1981). For the right to due process "encompasses the individual's right to be aware of and refute the evidence against the merits of his case." *Id.*; see also *Lynn v. Regents of the Univ. of Calif.*, 656 F.2d 1337, 1346 (9th Cir. 1981) (holding that *in camera* review of tenure file for purpose of assisting factual determination in Title VII action violates due process). "Although a judge freely may use *in camera, ex parte* examination of evidence to prevent the discovery or use of evidence, consideration of *in camera* submissions to determine the merits of litigation is allowable only when the submissions involve compelling national security concerns or the statute granting the cause of action specifically provides for *in camera* resolution of the dispute." *Vining v. Runyon*, 99 F.3d 1056, 1057 (11th Cir. 1996) (emphasis added). And this case does not implicate national security and the Public Records Act does not authorize *in camera* inspections for the resolution of disputes arising thereunder. See *cf.* 5 U.S.C. § 552(a)(4)(B) (in federal FOIA actions, the district court "may examine the contents of such agency records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions"); see also R.C. §

Generally, “[a] complaint in mandamus states a claim if it alleges the existence of the legal duty and the want of an adequate remedy at law with sufficient particularity so that the respondent is given reasonable notice of the claim asserted.” *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378, 381 (1992)(quoting *State ex rel. Alford v. Willoughby*, 58 Ohio St.2d 221, 224, 12 O.O.3d 229, 230, 390 N.E.2d 782, 785 (1979)). But “the lack of an adequate legal remedy does not apply to public-records cases.” *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 757 N.E.2d 357, 2001-Ohio-1613; accord *State ex rel. Dist. 1199, Health Care & Soc. Serv. Union, SEIU, AFL-CIO v. Lawrence Cty. Gen. Hosp.* (1998), 83 Ohio St.3d 351, 354, 699 N.E.2d 1281, 1283 (“persons seeking public records under R.C. 149.43 need not establish the lack of an adequate remedy at law in order to be entitled to a writ of mandamus”). Thus, with respect to a public records mandamus action, a motion to dismiss simply raises the question of whether the relator alleges the existence of the legal duty on the part of the respondent with sufficient particularity so that the respondent is given reasonable notice of the claim asserted.

And as alleged and developed in the Verified Complaint, a public records request was tendered on behalf of the Relator to the Respondent on November 17, 2011, that, generally speaking, sought public records concerning the ability of Danny R. Bulp to simultaneously hold the public offices of state representative and magistrate in a mayor’s court. (Verified Complaint

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3109.04 (specifically allowing court to interview in chambers children when making allocation of the parental rights and responsibilities).

Because this court sits as the ultimate trier of fact in original actions where the merits of the action directly involve the application *vel non* of the claim of attorney-client privilege to the withheld responsive records, it would be improper and violative of the constitutional requirements of due process for such an *in camera* submission. See *Couch v. Couch*, 146 S.W.2d 923, 925 (Ky. 2004)(“parties are entitled to know what evidence is used or relied upon by the trial court, and have the right generally to present rebutting evidence or to cross-examine”).

¶¶48-52 & Exh. A.) In response to this request, Mr. Bulp failed to respond whatsoever to the public records request for over 2 months; thus, Mr. Bulp had implicitly refused to produce any public records in response to the request. (Verified Complaint ¶54.)

Only after the commencement of this mandamus action did Mr. Bulp finally respond to the Relator's public records request. Initially, on January 25, 2012, the public information officer for the Ohio House of Representatives responded to the public records request on behalf of Mr. Bulp, transmitting *some* responsive records. (A copy of the cover e-mail from the public information officer is attached hereto as Exhibit A.) Then, nearly a month later on February 21, 2012, the assistant attorney general, who was then representing Mr. Bulp in this action, transmitted additional responsive records; in that second transmittal, the assistant attorney general indicated for the first time that 31 pages of responsive records were being withheld under a claim of attorney client-privilege. (A copy of this second e-mail is attached hereto as Exhibit B.) The foregoing is offered in appreciation of the fact that "in mandamus actions, a court is not limited to considering facts and circumstances at the time a proceeding is instituted but should consider the facts and conditions at the time it determines whether to issue a peremptory writ." *State ex rel. Portage Lakes Edn. Assn., OEA/NEA v. State Emp. Relations Bd.*, 95 Ohio St.3d 533, 2002-Ohio-2839, 769 N.E.2d 853 ¶54. For due to actions on behalf of Mr. Bulp – but only after the commencement of this action – the issue in this case has predominately been transformed in whether Mr. Bulp can meet his burden of clearly demonstrating, with evidence, that the documents which he is refusing to produce (in their entirety) are protected from disclosure pursuant to attorney-client privilege.<sup>2</sup> See *State ex rel Cincinnati Enquirer v. Jones-*

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<sup>2</sup> As noted above, Mr. Bulp is withholding, in their entirety, 31 pages of responsive public records. However, when responsive public records contain information that is only partially exempt from disclosure, then that information may be redacted but the remaining

*Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, syllabus ¶2 (“[e]xceptions to disclosure under the Public Records Act . . . are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of an exception. A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception”); *see also State v. Schafer*, 2008-Ohio-6183 ¶27 (“[t]he attorney-client privilege is not absolute and the mere existence of an attorney-client relationship does not, raise the presumption that all communications made are confidential”).

In the motion, Mr. Bulp raises for the first time a claim that the public records request at issue was not a “proper public record request.” (Motion, at 7-8.) Such an argument is baseless and nothing more than a red herring. Firstly, as noted above and is well-established, in a mandamus action, a court should consider the facts and conditions at the time it determines whether to issue a peremptory writ. The issue in this case is clearly focused for the presentation of evidence and ultimate resolution by this Court, *i.e.*, whether Mr. Bulp can meet his burden of demonstrating, with respect to the 31-pages of records withheld in their entirety, the applicability of the attorney-client privilege so as to justify their non-production.

Additionally, Mr. Bulp clearly knew and recognized what public records were sought. If he truly and legitimately had issues with the request such that he could not reasonably identify what public records were being requested, the time to address that issue is when responding to the request, not after the commencement of a mandamus action and the production of responsive records and the withholding the remaining responsive records based upon a claim of privilege.

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portions of the responsive record must be produced. *See State ex rel. O’Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 2012-Ohio-115, 131 Ohio St.3d 149, 962 N.E.2d 297. Thus, as he is withholding these 31 pages in their entirety, Mr. Bulp will have the burden of demonstrating not only that the withheld records contain information protected by the attorney-client privilege, but that those records *in their entirety* are properly being withheld pursuant to the claimed privilege.

The Public Records Act specifically provides that “[i]f a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section *such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested*, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office’s or person’s duties.” R.C. 149.43(B)(2)(emphasis added).<sup>3</sup> Thus, the concern with overly broad or ambiguous requests is not for the purpose of engaging on gamesmanship of whether the general public can couch a public records request with precision but, rather, simply whether the public office or person responsible for the public records can

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<sup>3</sup> Just recently, this Court was confronted and soundly rejected an effort by a respondent in a public records mandamus action to raise a defense, but only after the commencement of the mandamus action, that a request was overly broad. In *State ex rel. O’Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 2012-Ohio-115, 131 Ohio St.3d 149, 962 N.E.2d 297, this Court noted and found pertinent that “[w]hen initially responding to [the public records] request . . ., [the respondent] did not suggest that it was ambiguous or overbroad, or an improper request for information rather than records; it did not make that argument until after [the requestor] instituted its public records mandamus case.” And in light of the requestor subsequently clarifying the request, the public office was able to identify responsive records such that the “the [requestor’s] request . . . was appropriate.” *Id.* ¶¶20-22. And in that case, the request (as clarified) which this Court found appropriate – records “required by federal law to keep . . . of all instances of lead problem properties and repairs, as well as records of all instance where a child was poisoned” – is still significantly broader than the request at issue in this case, especially in the context of the prior complaint being filed with the Ohio Attorney General and the news report concerning Mr. Bulp’s violation of the Ohio Constitution by simultaneously holding two public offices. See also *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 894 N.E.2d 686, 2008-Ohio-4788 (while request seeking all written correspondence sent or received by state representative since beginning of service as a state representative was improper as being overly broad, Court considered and analyzed as proper a request for records of the state representative “related to H.B. No. 151 and the divestiture of investments in Iran and Sudan”).

“reasonably identify what public records are being requested.” In this case, Mr. Bulp clearly knew what records were being sought and could readily identify such records.<sup>4</sup>

Resolution of the propriety *vel non* of the withholding of responsive records in their entirety based upon a claim of attorney-client privilege must be ultimately resolved by this Court, but only after the tendering of proper evidence and the submission of arguments by the parties on the merits. *See* Sup. Ct. R. Prac. 10.6 (“[w]hen an alternative writ is issued, the Supreme Court will issue a schedule for the presentation of evidence and the filing and service of briefs or other pleadings”). Accordingly, this case, like all cases where responsive records are being withheld under a claimed exemption, must be resolved on the merits based upon the evidence, not a motion to dismiss. Accordingly, the Motion to Dismiss must be denied.

For “[i]n a [public records] mandamus action, the court [will] have to determine . . . whether any public records should be released with the proper redactions.” *Davis v. Cincinnati Enquirer*, 164 Ohio App.3d 36, 840 N.E.2d 1150, 2005-Ohio-5719 ¶15; *see State ex rel. Master*

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<sup>4</sup> Amazingly, though ignoring it in the context of the present motion, the Ohio Attorney General has recognized and acknowledged that which makes a public records request improper is the inability of the public office to identify responsive records. In *Ohio Sunshine Laws: An Open Government Manual 2012*, published jointly by the Ohio Attorney General and the Ohio State Auditor, the specific question of “What is An Ambiguous or Overly Broad Request?” is tendered. And the response from the Attorney General to this posed question is “[a]n ambiguous request is one that lacks the clarity a public office needs to ascertain what the requestor is seeking and where to look for records that might be responsive. The wording may be vague or subject to interpretation. An overly broad request can be one that is so inclusive that the public office is unable to identify the records sought based on the manner in which the office routinely organizes and accesses records.” *Ohio Sunshine Laws*, at 16.

Again, the issue goes to the ability of the public office to identify the records sought, not whether the requestor is a wordsmith who is able to divine with absolute and mathematical precision the existence of a specific or particular record. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 857 N.E.2d 1208, 2006-Ohio-6365 ¶37 (“we have never held that in order to constitute a viable request, the requester must specify the author and date of the records requested. Although this may be helpful in identifying the requested records, the failure to do so does not automatically result in an improper request for public records, particularly where, as here, it is evident that the public office was aware of the specific records requested. We do not require perfection in public-records requests”).

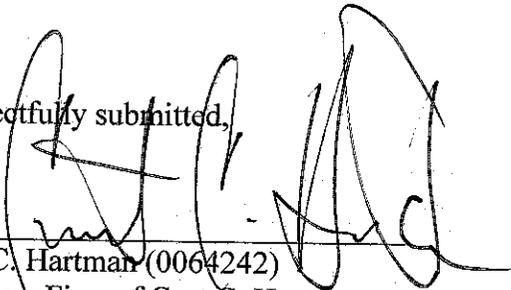
*v. Cleveland* (1996), 75 Ohio St.3d 23, 31, 661 N.E.2d 180, 186-187 (“[w]hen a governmental body asserts that public records are excepted from disclosure and such assertion is challenged, the court must make an individualized scrutiny of the records in question” (quoting *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland* (1988), 38 Ohio St.3d 79, 526 N.E.2d 786, syllabus ¶4).) Yet, the basic premise of the Motion to Dismiss is that the Mr. Bulp or his legal counsel alone can and is entitled to make the ultimate dispositive determination of whether information in responsive public records should be withheld. But in so doing, Mr. Bulp is effectively refusing to acknowledge that “[i]t is emphatically the province and duty of the judicial department to say what the law is.” *United States v. Nixon*, 418 U.S. 683, 703 (1974)(quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803)). And in the public records context, it is the sole province of the courts, not the custodian of the public records, to make the ultimate determination of whether sufficient evidence clearly establishes the application of a claimed exception to the release of responsive public records. Thus, the Mr. Bulp’s effort to ignore the role of the courts in public records mandamus action must be rejected.

Based upon the foregoing, as well as a review of the Verified Complaint with all reasonable inferences there being made in favor of the Relator, a sufficient claim against Respondent has been stated such that the Motion to Dismiss must be denied.<sup>5</sup>

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<sup>5</sup> And even should this Court should allow Mr. Bulp to be the final decision maker on the application *vel non* of a claimed exemption so as to moot the mandamus claim, the mooting of a mandamus claim does not moot or resolve any claims for statutory damages or attorney fess. *State ex rel. Cincinnati Enquirer v. Heath*, 121 Ohio St. 3d 165, 902 N.E.2d 976, 2009-Ohio-590 ¶18; *State ex rel. Pennington v. Gundler*, 75 Ohio St. 3d 171, 661 N.E.2d 1049 (1996); *State ex rel. Cincinnati Enquirer v. Ronan*, 124 Ohio St.3d 17, 918 N.E.2d 515, 2009-Ohio-5947. In this case, because Mr. Bulp “failed to respond affirmatively or negatively to the public records request,” the award of attorney is mandatory pursuant to the Public Records Act R.C. § 149.43(C)(2)(b)(i); see *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 49-50, 914 N.E.2d 159, 166-67, 2009-Ohio-4149 ¶¶30 & 31 (with respect to the Public Records Act, referencing “the

Respectfully submitted,



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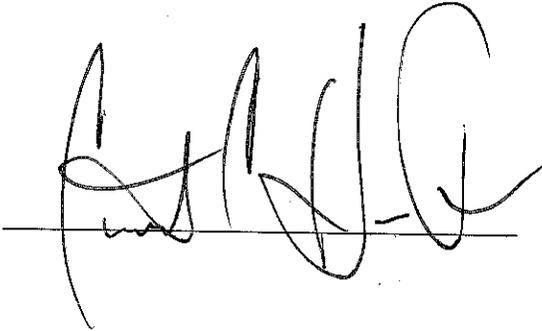
Curt C. Hartman (0064242)  
The Law Firm of Curt C. Hartman  
3749 Fox Point Court  
Amelia, Ohio 45102  
(513) 752-8800  
*hartmanlawfirm@fuse.net*

*Attorneys for Relator Kent Lanham*

### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served, via regular mail, upon the following on the 24th day of May 2012:

Jeannine Lesperance  
Renata Y. Staff  
Office of the Ohio Attorney General  
30 East Broad Street  
Columbus, OH 43215



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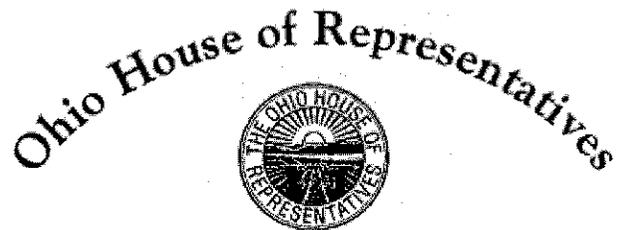
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two instances requiring attorney-fee awards” one of which being “when there is no timely response to a public-records request”).

## The Law Firm of Curt C. Hartman

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**From:** Yano, Marjorie <Marjorie.Yano@ohr.state.oh.us>  
**Sent:** Wednesday, January 25, 2012 5:20 PM  
**To:** 'hartmanlawfirm@fuse.net'  
**Subject:** Public Records Request  
**Attachments:** Hartman Request - Records.pdf



January 25, 2012

Dear Mr. Hartman,

On November 17, 2011 you requested the following public records from the office of State Representative Bubp:

- all records that discuss or evaluate the authority or ability for you to simultaneously hold the public offices of state representative and magistrate in a mayor's court;
- all records document any request tendered by or on your behalf as to the authority or ability for you to simultaneously hold the public offices of state representative and magistrate in a mayor's court;
- all records documenting any response to any request tendered by or on your behalf as to the authority or ability for you to simultaneously hold the public office of state representative and magistrate in a mayor's court;
- all records upon which you rely to establish the ability or authority for you to simultaneously hold the public offices of state representative and magistrate in a mayor's court.

Attached to this email are records responsive to this request.

Our legal team handles all public records requests for the 59 members of the House Republican caucus. Over the past year, we have received over 500 requests for records. It is our policy to respond to these requests on a first-in-first-out basis. No matter how small the request, it is our policy to not allow certain requests to "skip the line" to ensure a fair policy towards all. There were several voluminous public records requests in the queue prior to your request.

If you have any questions, please contact me.

Sincerely,

Marjorie Yano

Public Inquiries Officer  
[marjorie.yano@ohr.state.oh.us](mailto:marjorie.yano@ohr.state.oh.us)

## Curt C. Hartman

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**From:** Jeff Clark <Jeffery.Clark@ohioattorneygeneral.gov>  
**Sent:** Tuesday, February 21, 2012 3:41 PM  
**To:** 'Curt Hartman'; Jeannine Lesperance  
**Cc:** Lenzo, Mike (Mike.Lenzo@ohr.state.oh.us)  
**Subject:** FW: State ex rel Lanham v. Bubp, Ohio Supreme Court, Case No. 2012-0131  
**Attachments:** Hartman Release Additional Records 2-21-12.pdf

Dear Mr. Hartman,

Our client has found 33 pages of additional documents responsive to your request. All but two of those pages consist of attorney-client privileged material, and the other 31 pages will be withheld on that basis in their entirety. See *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508; *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St.3d 245, 1994-Ohio-261; and *Reed v. Baxter* (6th Cir. 1998), 134 F.3d 351.

The two pages not subject to the privilege are attached as a .pdf file to this e-mail. We believe that this completes the provision of records responsive to your public records request. Please let us know if you have any additional questions.

Jeff Clark  
Principal Attorney, Constitutional Offices Section  
Ohio Attorney General Mike DeWine  
**PHONE** 614.466.2872  
**FAX** 614.728.7592  
**EMAIL** [jeff.clark@ohioattorneygeneral.gov](mailto:jeff.clark@ohioattorneygeneral.gov)

30 East Broad Street, Floor 16  
Columbus, Ohio 43215  
[www.ohioattorneygeneral.gov](http://www.ohioattorneygeneral.gov)

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**From:** Jeannine Lesperance  
**Sent:** Thursday, February 16, 2012 11:30 AM  
**To:** 'Curt Hartman'; Jeff Clark  
**Cc:** Lenzo, Mike  
**Subject:** RE: State ex rel Lanham v. Bubp, Ohio Supreme Court, Case No. 2012-0131

Mr. Hartman,

In further response to your inquiry below, I am informed as follows:

1, 2, and 3: None of the referenced records still exists. They were properly destroyed per the House's public records policy and schedule, which allows destruction of that record series (LEG 21) when they are no longer of administrative value. The computer backups for that time period have long been overwritten as well.

4: The reference in the email on page 67 is to Advisory Opinion 2009-7 from the Supreme Court of Ohio Board of Commissioners on Grievance and Discipline dealing with domestic relations court magistrates serving on city council at the same time. The advisory opinion was included in the records release on pages 63-66 of the .pdf.

Thank you.

Jeannine Lesperance

Jeannine R. Lesperance  
Principal Assistant Attorney General - Constitutional Offices  
Office of Ohio Attorney General Mike DeWine  
Office number: 614-466-2872  
Fax number: 614-728-7592  
Direct number: 614-466-1853  
[Jeannine.Lesperance@OhioAttorneyGeneral.gov](mailto:Jeannine.Lesperance@OhioAttorneyGeneral.gov)

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**From:** Curt Hartman [mailto:chartman@fuse.net]  
**Sent:** Saturday, February 11, 2012 9:49 PM  
**To:** Damian Sikora; Jeannine Lesperance  
**Subject:** State ex rel Lanham v. Bupp, Ohio Supreme Court, Case No. 2012-0131

Counsel –

I wanted to touch base with you in an effort to expedite the potential for mediation to resolve this public records case. Prior to your entry of appearance, I talked to Mike Lenzo concerning the sufficiency of the production, indicating that the production appeared to be incomplete. In the event that Mike failed to relay to you the issues I raised with him, I wanted to pass them along to you, as well.

In reviewing the records that were produced – but only after commencement of the public records mandamus action – it appears that additional records should have been produced. As the records were produced to me in a pdf-format, I will presume that they were provided to you in the same format and, thus, for ease of reference, will include a reference to a page number that corresponds to the page in the pdf-file. As for the issue of potentially additional outstanding records, I would note the following:

1. Page 1, an e-mail from Erica Wilson (legislative aide to Mr. Bupp) dated October 30, 2009, and directed to Nathan Slonaker (legislative aid to Rep. Batchelder). The subject line indicates that this e-mail was forwarded from a previously received e-mail. Yet, this earlier e-mail has not yet been produced.
2. Page 4, an e-mail from Erica Wilson (legislative aide to Mr. Bupp) dated November 10, 2009, and directed to Mary Jane Campbell (who works in Mr. Bupp's private law practice). As with #1 above, the subject line indicates that this e-mail was forwarded from a previously received e-mail. Yet, this earlier e-mail has not yet been produced.
3. Page 7, in a letter from Rep. Batchler to Chris Redfern, Rep. Batchler makes the claim that Mr. Bupp "sought counsel on this matter over give years ago, receiving the go-ahead to serve as magistrate . . . from Tony Bledsoe." Absent from any production of records in this case are any records documenting a request being tendered to Mr. Bledsoe or a corresponding response to Mr. Bupp. In fact, the only document from the time frame of 2004 is what appears to be a generic letter dated "December XX, 2004" and which simply addresses whether the ethics laws and the Legislative Code of Ethic prohibit a member of the General Assembly from also serving as a mayor's court magistrate. (It is noteworthy, that this generic letter does not even begin to address the constitution provision which Mr. Bupp continues to violate or the effect of R.C. 102.26 (both of which are outside the jurisdiction of JLEC).) But missing from the request are any records documenting correspondence, communications, etc., that document Mr. Bupp seeking the counsel to which Rep. Batchelder references.

4. Page 67, an e-mail from Erica Wilson (legislative aide to Mr. Bubb) dated January 12, 2010, and directed to Mike Lenzo, wherein Ms. Wilson references the "magistrate ruling". Yet, there are no other records concerning the refenced "magistrate ruling".

As indicated above, I am undertaking this effort at this time to expedite the mediation process, if that is possible. I'd appreciate you looking into the issues raised above. Hopefully we can have them resolved prior to the mediation.

Sincerely,  
Curt Hartman